

Exhibit 10

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Democracy Dies in Darkness

Sixteen Penn swimmers say transgender teammate Lia Thomas should not be allowed to compete



By [Matt Bonesteel](#)

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Sixteen members of the University of Pennsylvania women's swimming team sent a letter to school and Ivy League officials Thursday asking that they not take legal action challenging the NCAA's [recently updated transgender policy](#). That updated directive has the potential to prevent Penn swimmer Lia Thomas from competing at next month's NCAA championships, and the letter indicates the 16 other swimmers believe their teammate should be sidelined.

Thomas, a transgender woman [who swims for the Quakers women's team](#), competed for the Penn men's team for three seasons. After undergoing more than two years of hormone replacement therapy as part of her transition, she has posted the fastest times of any female college swimmer in two events this season. The letter from Thomas's teammates raised the question of fairness and said she was taking "competitive opportunities" away from them — namely spots in the Ivy League championship meet, where schools can only send about half of their rosters to compete.

"We fully support Lia Thomas in her decision to affirm her gender identity and to transition from a man to a woman. Lia has every right to live her life authentically," the letter read. "However, we also recognize that when it comes to sports competition, that the biology of sex is a separate issue from someone's gender identity. Biologically, Lia holds an unfair advantage over competition in the women's category, as evidenced by her rankings that have bounced from #462 as a male to #1 as a female. If she were to be eligible to compete against us, she could now break Penn, Ivy, and NCAA Women's Swimming records; feats she could never have done as a male athlete."

Thomas's teammates did not identify themselves in the letter. It was sent by Nancy Hogshead-Makar, a 1984 Olympic swimming gold medalist, lawyer and chief executive of Champion Women, a women's sports advocacy organization. She said in a telephone interview that she sent the letter on the swimmers' behalf so they could avoid retaliation; in the letter, the swimmers claim they were told "we would be removed from the team or that we would never get a job offer" if they spoke out against Thomas's inclusion in women's competition.

Penn officials did not respond to a request for comment on either the claims raised in the letter or whether the school planned to mount a legal challenge should Thomas be ruled ineligible for the NCAA championships.

On Tuesday, another group of Penn swimmers released a statement supporting Thomas after an unidentified Quakers swimmer spoke to Fox News about her, claiming she had a “monumental” advantage over her teammates after going through male puberty.

“We want to express our full support for Lia in her transition,” the athletes said in Tuesday’s statement, per ESPN. “We value her as a person, teammate, and friend. The sentiments put forward by an anonymous member of our team are not representative of the feelings, values, and opinions of the entire Penn team, composed of 39 women with diverse backgrounds.”

A Penn spokesman told ESPN that Tuesday’s statement was sent on behalf of “several” Quakers swimmers. On Thursday, the parent of a Penn swimmer, who did not want to be identified for fear of retaliation against their daughter, said in a telephone interview that they estimated the letter supporting Thomas was sent on behalf of only “two or three” swimmers.

Last month, the NCAA established a new sport-by-sport policy in which transgender athletes’ participation will be determined by the policy set by each sport’s governing body. On Tuesday, USA Swimming issued a new policy that establishes eligibility criteria for transgender athletes in elite events.

To determine a transgender swimmer’s eligibility at the elite level, a three-person panel of independent medical experts will determine whether the swimmer’s prior physical development as a man gives the athlete a competitive advantage over her cisgender female competitors. The swimmer also must show the concentration of testosterone in her blood has been less than 5 nanomoles per liter continuously for at least 36 months.

The NCAA swimming championships are scheduled for March 16-19, and Thomas has qualified for multiple events. She seemingly will be allowed by the NCAA to compete because it is phasing in its new transgender policy in three stages, the first of which covers this year’s championships in winter and spring sports.

To compete during this first stage, Thomas will not have to meet the standards set this week by USA Swimming. Instead, she will have to submit documentation to the NCAA’s Committee on Competitive Safeguards and Medical Aspects of Sports that shows she has undergone at least one year of testosterone-suppression treatment and provide proof of a one-time serum testosterone level that falls below the maximum allowable level for the sport.

The one-year requirement was part of the NCAA’s previous transgender policy, which was established in 2010. Hogshead-Makar said the NCAA was wise to update its rules.

“It turns out that it was only based on a hypothesis and that it was just not true,” Hogshead-Makar said of the previous NCAA policy that is being phased out. “So now there’s been a lot more science on it, more research on it, and it shows that in many cases that ... you cannot roll back [male puberty]; you can’t take any medication to overcome what male puberty gives you.”

Case 3:24-cv-00563-TAD-KDM Document 24-11 Filed 05/15/24 Page 4 of 4 PageID #: 1689
“When it became clear, all this new science was coming through, transgender advocates were saying: ‘Oh, but it’s never going to happen. Nobody’s ever going to come and break women’s records. ... You’re not going to see that at the Olympics or at nationals.’ And then Lia came along. It just shows the need to update the NCAA rule.”

The second phase of the NCAA’s new transgender policy begins with the 2022-23 academic year and will require athletes to have their testosterone tested at the start of their competition season and again six months later. The third phase, in which the NCAA will use the rules established by USA Swimming, will go into effect in the 2023-24 academic year.

The Penn swimming parent, whose daughter is one of the 16 behind Thursday’s letter, described the athletes as conflicted over Thomas’s presence on the team, with some supporting her, others bothered by the fact that Thomas was taking away their opportunities to compete because of a perceived biological advantage and still others who simply are weary of the distraction the issue is causing.

“There’s a swimmer who is a senior. She approached the coach about this. She was, in so many words, told to ‘get over it,’ ” the parent said. “In a subsequent conversation with my daughter, she expressed how she’s really unhappy with the situation, she thinks it’s wrong, and so on, but she thinks that since we’re at this point of the season already, she thinks at this point Lia should just be able to finish out the season. That’s another perspective.”
